

Remarks:

Applicant has carefully studied the final Examiner's Action mailed 12/30/2003, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by centered headings and numbered paragraphs that correspond to the centered headings and paragraph numbering employed by the Office, to ensure full response on the merits to each finding of the Office.

Claim Rejections – 35 U.S.C. § 112

Applicant acknowledges the quotation of 35 U.S.C. § 112, second paragraph.

Claims 15-21 stand rejected under 35 U.S.C. § 112, second paragraph, because said claims 15-21 depend from cancelled claims. As currently amended, claims 15-19 depend from independent claim 14 and claims 20 and 21 depend from claim 19. No claim, as amended, now depends from a cancelled claim.

Applicant acknowledges the quotation of 35 U.S.C. § 112, first paragraph.

Claim 15 stands rejected under 35 U.S.C. § 112, first paragraph, because the specification does not support a claim for the support arm to be made of polyethylene. This ground of rejection is met by amending claim 15 to recite that a predetermined extent of the support arm is covered by a low density polyethylene foam, as indicated in the drawings as filed.

Claim Rejections – 35 U.S.C. § 103

Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

1. Claims 14 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Marier, Jr. in view of Wateska et al. (hereinafter "Wateska"). Reconsideration and withdrawal of this ground of rejection is requested for the following reasons.

The Office contends: "Though Marier, Jr. prefers the elevated path guide means to extend in two directions, (it) would achieve the same result with one rod extending in either direction."

However, both rods are required in the Marier, Jr. construction. The Marier, Jr. device loses its efficacy if the leading end of the rod is removed or if the trailing end of the rod is removed. Fig. 1 indicates that both rods 22, 22 must be used at the same time and Figs. 2 and 3 indicate that rod assembly 12 must be engaged at its mid-point by T-joint 24.

The teaching of a single rod positioned either on the leading or the trailing side of a T-joint, but not on both sides at the same time, is Applicant's teaching. The Office commits clear error in arguing that the Marier, Jr. construction "would achieve the same result with one rod extending in one direction."

Applicant concedes that Wateska teaches the use of cushioning material in a golf swing training device but Marier, Jr., modified by Wateska, does not suggest the invention recited in claim 14, as currently amended.

2. Claims 15 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 14, and in view of Macri. Applicant acknowledges that Macri and the admitted prior art would have suggested the respective subjects matter of claims 15 and 17. Applicant relies upon the dependency of claims 15 and 17 from claim 14 as currently amended to support their allowance. Neither Macri nor the admitted prior art would have taught or suggested the invention claimed in claim 14, as currently amended.

3. Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 14, in view of McCormick. Applicant acknowledges that McCormick and the admitted prior art would have suggested the subject matter of claim 18. Applicant relies upon the dependency of claim 18 from claim 14 as currently amended to support its allowance. Neither McCormick nor the admitted prior art would have taught or suggested the invention claimed in claim 14, as currently amended.

4. Claims 19 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 14. Applicant acknowledges that the admitted prior art would have suggested the respective subjects matter of claims 19 and 20. Applicant relies upon the dependency of claims 19 and 20 from claim 14 as currently amended to support their allowance. The admitted prior art would not have taught or suggested the invention claimed in claim 14, as currently amended.

5. Claim 21 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over the prior art as applied to claim 20, further in view of Lambert. Applicant acknowledges that Lambert and the admitted prior art would have suggested the subject matter of claim 21. Applicant relies upon the dependency of claim 21 from claim 14 as currently amended to support its allowance. Neither Lambert nor the admitted prior art would have taught or suggested the invention claimed in claim 14, as currently amended.

Response to Arguments

The Office notes: "The applicant has one guide in which, not at the same time, extends in two directions, as trailing or leading direction." This clearly distinguishes Applicant's invention from Marier, Jr.'s invention because the rod in Marier, Jr. does extend in both directions at the same time. As amended, claim 14 now clearly recites this distinction. Applicant thanks the Office for pointing out this critical structural distinction between the respective apparatuses of Marier, Jr., and Applicant.

Whether or not this concrete structural difference represents an "advantage over that of Marier, Jr." is an issue to be decided by golf-training experts. It is not within the realm of competence for the Office to determine whether or not Applicant's structure provides better or worse training at the game of golf than the structure of Marier, Jr. The issue within the competence of the Office is whether or not the structure of Marier, Jr., with its single guide rod grasped at its mid-point, would have impelled one of ordinary skill to create the invention as recited by Applicant. The answer is clearly in the negative because Marier, Jr. taught away from Applicant's contribution. Applicant's contribution can be found only by mutilating and transforming the Marier, Jr. device in view of Applicant's disclosure. In fairness to Applicant, the outstanding rejection should be withdrawn.

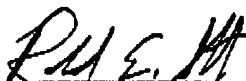
This amendment is submitted with a Request For Continuing Examination (RCE) to ensure its entry. However, if the Office cannot enter a Notice of Allowance upon entry of this Amendment E, Applicant requests a final rejection despite the RCE so that an appeal can be filed without further delay. The purpose of this amendment is to overcome all procedural rejections so that only the substantive rejection based primarily upon Marier, Jr. may be reviewed.

Conclusion

If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested.

Very respectfully,
SMITH & HOPEN

Dated: March 29, 2004

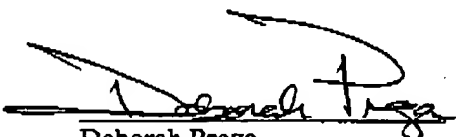
By: 
Ronald E. Smith
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

pc: Mr. Jim Sowerwine

CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8(a))

I HEREBY CERTIFY that this Amendment E, including Introductory Comments, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Art Unit 3711, Attn: Mr. Alvin A. Hunter, (703) 872-9303 on March 29, 2004.

Dated: March 29, 2004


Deborah Preza